

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUNIPER BISHOPS, LLC,

Plaintiff,

v.

CIV 21-674 CG/SCY

RICHARD HOLLAND,

Defendant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER comes before the Court *sua sponte*. On November 17, 2021, the Court issued an Order to Show Cause to Plaintiff to provide an explanation why Defendant was not served. Doc. 3. The Court ordered:

[I]n order to avoid dismissal of this action, Plaintiff must either effect service or provide the Court with a written explanation showing good cause why service has not been made, on or before **Monday, November 29, 2021**.

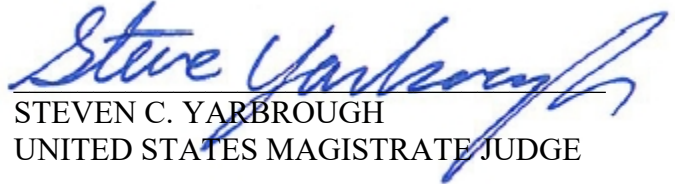
Id. at 1.

That deadline passed without a response from Plaintiff or a request for extension of time to respond. Because Plaintiff has neither filed proof of service on Defendant nor responded to the Order to Show Cause, I recommend that the Court dismiss this case without prejudice.

Rule 41(b) permits a court to dismiss an action or any claim for failing to prosecute that action or claim. *See* Fed. R. Civ. P. 41(b); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.”). “Employing Rule 41(b) to dismiss a case without prejudice . . . allows the plaintiff another go at [compliance]; accordingly, a district court may, without abusing its discretion, enter such an

order without attention to any particular procedures,” such as an evaluation of the *Ehrenhaus* factors. *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Just. Ctr.*, 492 F.3d 1158, 1162 (10th Cir. 2007).

Given that Plaintiff has not served Defendant in the 4 months that have passed since Plaintiff filed the complaint and that Plaintiff has not responded to the Order to Show Cause, I recommend that the Court dismiss this suit without prejudice.


STEVEN C. YARBROUGH
UNITED STATES MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**